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Cc: []
From: CN=Sheila Eckman/OU=R10/O=USEPA/C=US
Sent: Thur 1/10/2013 3:07:18 PM
Subject: Re: Proposed amendments to the 2005 BBAP

Thanks, Phil. This is really helpful.

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To: Cara Steiner-Riley/R10/USEPA/US@EPA, Sheila Eckman/R10/USEPA/US@EPA, Richard Parkin/R10/USEPA/US@EPA, Palmer Hough/DC/USEPA/US@EPA, Jeff Frithsen/DC/USEPA/US
Date: 01/08/2013 07:27 PM
Subject: Proposed amendments to the 2005 BBAP

The proposed BBAP amendments do not substantially change the 2005 BBAP. I don't think the changes affect the BBA.

The primary changes are an increase in the areas classified as habitat, primarily by adding two types of habitat:

1. Moose and caribou wintering and calving area. These are limited to the riparian zone of the Mulchatna River and some of its tributaries and three blocks near Wood-Tikchik State Park in the Nushagak drainage. The Koktuli is included up to the boundary of lands classified as Mineral around the Pebble deposit. The classification boundary is just west of Kaskanak Mountain.
2. Waters that were closed by MCO 393 are converted to the Habitat classification and they are still subject to the closure. Closed waters include 100 feet on either side of the ordinary high water mark and extend over the Pebble deposit on Upper Talarik Creek. This is the same extent as in both the 1984 and 2005 BBAPs. On SF Koktuli the closure extends to the outlet of Frying Pan Lake.

Other changes to the BBAP proposed in the amendments are clarifications that don't change the intent or narrow the management goals. See the table on page 31 for a summary of all the changes.

The Habitat classification/designation does not preclude development. It is similar to Section 404 of the CWA in that adverse effects can be mitigated at the discretion of the adjudicating official. I have attached some of the pertinent language from the 2005 plan.

An area where the amendment document clearly fails is in its rationalization of using navigability to determine the extent of a Habitat classification for anadromous waters. I have attached the language from the amendment document and my explanation for why I think it is not reasonable.

[attachment "Management Guidelines-Habitat.docx" deleted by Sheila Eckman/R10/USEPA/US]
[attachment "Riparian development policy 2005 BBAP.docx" deleted by Sheila Eckman/R10/USEPA/US]
[attachment "Third Cause of Action - Navigability.docx" deleted by Sheila Eckman/R10/USEPA/US]

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